Office of Chief Counsel Internal Revenue Servi∈

memorandum

CC:NER:MAL:TL-N-930-00
JJSweenev

date:

to: Chief Examination Division, Manhattan District Attn: Daniel Altman, CEP Case Manager, Team 1103

from: District Counsel, Manhattan District, New York

subject: Taxpayer: (U.I.L. #6501.08-10)
EIN: Taxable Years: through (Form 1120F Returns)

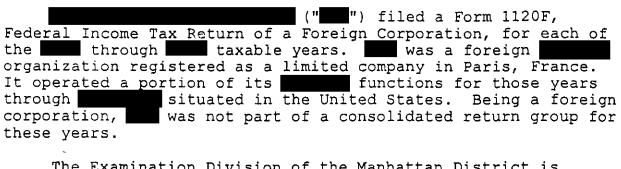
PROPER PARTY TO SIGN FORM 872 AFTER MERGER

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This memorandum responds to your request of June 9, 2000 for written advice concerning the appropriate language for a Form 872, Consent to Extend the Statute of Limitations on Assessment, ("Form 872") in connection with the Form 1120F income tax returns of for its through tax years. This request was made in light of the purported merger under French law of and the purported merger under the purpo

In brief, we conclude the Form 872 to be issued should be addressed as follows: " (), formerly know as ()". This conclusion is subject to our other recommendations made herein, which should be read in full before preparing the Form 872.

Facts



The Examination Division of the Manhattan District is currently examining these Form 1120F returns. Each of the taxable years through remain open for assessment under I.R.C. § 6501(c)(4) based on a Form 872 previously executed by on The period for assessment for these years currently expires on December 31,

, also a organization registered as a limited company in Paris, France, purportedly executed a Merger Agreement ("the Agreement") under the laws of France1. This merger culminated from several transactions in which acquired all of the common stock of . (Agreement, para. 1(c)). In this merger, emerged as the surviving corporation; the separate existence of ceased. (<u>Id.</u>, recitals, section V, Dissolution of control of the assets of the including those located outside of France, became vested in . (Id., para. 4). assumed all 's outstanding liabilities, including those liabilities incurred by outside of France and dividends to 's stockholders to be paid for the December 31, year. (Id., paras. 3 and 4). Also upon the merger, adopted the name " ". (Id., para. 1(A)(a)). In connection with this name change, has represented to you that its EIN for U.S. tax purposes is the same EIN as for

The issue is whether ______ is the proper party to execute a Form 872 to extend the period for assessing tax for the through _____ tax years of _____. If so, it must then be determined how _____ should be described on the "name" line of the Form 872.

We reviewed an unexecuted version of this merger agreement. For purposes of this memorandum, we assume that this agreement was executed on thereon. (b)(5)(DP),(b)(7)a

Law and Analysis

As the statute of limitations on assessment for the
through tax years of was previously extended until
December 31, an additional Form 872 can be secured to
further extend the statute of limitations on assessment for those
years. I.R.C. § 6501(c)(4). For this purpose, is
the proper party to execute the Form 872 if it bears primary
liability for the debts of was the surviving
corporation in the merger with . It changed its name to
upon the merger. Thus, with respect to , the
language of a Form 872 should be treated as a situation in which
a corporation has undertaken a mere change in name. Gator Oil
Company v. Commissioner, 66 T.C. 145 (1976).

In <u>Gator Oil</u>, the petitioner changed its name by amending its by-laws and by filing its name change with Florida, its state of incorporation. The Court determined that under Florida law this name change had no effect on the petitioner's continuing liability for debts incurred before its change in name. The principle from this case applicable here is that when an entity changes its name, relevant local law should determine the extent to which the name change has any impact on the entity's liability for debts incurred before its change in name.

In this case, the merger agreement specified that was to assume all of the liabilities of . It did not specifically state that would assume its own liabilities, presumably because that fact was obvious from the context of this transaction. Thus, it is reasonable to conclude that under the agreement continued to bear its obligations even after changing its name to and that French law would so require.

872, know	Accordingly, with the follow language as	the	party	(execute	e Form formerly
	, (b)(5)(DP), (b)(7)a					





Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document these actions in the case file.

Finally, we further recommend that you pay strict attention

² , (b)(5)(DP), (b)(7)a

to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 372, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

If you have any questions concerning the advice provided in this memorandum, please contact John Sweeney at (212) 264-1595, ext. 263. We will retain our files for this case to provide further assistance.

LINDA R. DETTERY District Counsel

By:

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Assistant District Counsel

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